

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
) DOCKET NO.: 20-cr-40036-TSH
 v.)
)
 VINCENT KIEJKO)
)

DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

EXHIBIT 13:

Complaint,

United States v. Clark, 21-mj-00147-JLW (W.D. Wash. Mar. 11, 2021)

The Honorable John L. Weinberg

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BEFORE, The Honorable Mary Alice Theiler, United States Magistrate Judge, U.S. Courthouse, Seattle, Washington.

COUNT 1

(Possession of Child Pornography)

22 Between on an unknown date and continuing until on or about March 18, 2020, at
23 Edmonds, within the Western District of Washington, and elsewhere, THOMAS S.
24 CLARK knowingly possessed matter that contained visual depictions, the production of
25 which involved the use of minors engaging in sexually explicit conduct, and the visual
26 depictions were of such conduct, that had been mailed and shipped and transported in and
27 affecting interstate and foreign commerce by any means, including by computer, and
28 which had been produced using materials that had been mailed and shipped and

1 transported in and affecting interstate and foreign commerce by any means, including by
 2 computer, and the images of child pornography involved include images of a
 3 prepubescent minor and a minor who had not attained 12 years of age.

4 All in violation of Title 18, United States Code, Section 2252(a)(4)(B), (b)(2).

5
 6 And the Complainant states that this Complaint is based on the following
 7 information:

8 I, Reese Berg, being first duly sworn on oath, depose and say:

9 **I. INTRODUCTION**

10 1. I am an investigative or law enforcement officer of the United States within
 11 the meaning of Title 18, United States Code, Section 2510(7). I am currently employed
 12 as a Special Agent with Homeland Security Investigations (HSI). I have been a federal
 13 law enforcement officer for over 15 years. I have investigated and/or participated in
 14 investigations involving narcotics smuggling, human trafficking/smuggling, firearms
 15 trafficking, child pornography, child exploitation, marriage fraud and international
 16 criminal gangs. I have also held positions in law enforcement as a Military Police Officer
 17 and Military Police Investigator with the U. S. Army for over 20 years. I am a graduate
 18 of the 9-week Criminal Investigator Training Program as well as the Immigration and
 19 Customs Enforcement Special Agent Training program at the Federal Law Enforcement
 20 Training Center in Glynco, Georgia. I am currently assigned as a Special Agent with HSI
 21 Seattle, where my duties include child exploitation and child pornography investigations.
 22 I have participated in more than thirty child exploitation or child pornography
 23 investigations and have worked extensively with other investigators involved in these
 24 types of investigations.

25 2. As further detailed below, based on my investigation and the investigation
 26 of other law enforcement officers, I believe there is probable cause to conclude that
 27 THOMAS S. CLARK, has committed the offense charged in Count 1 of this Complaint--

1 namely, possession of child pornography in violation of 18 U.S.C. § 2252(a)(4)(B),
 2 (b)(2).

3 3. The facts set forth in this Complaint are based on my own personal
 4 knowledge; knowledge obtained from other individuals during my participation in this
 5 investigation, including other law enforcement officers; review of documents and records
 6 related to this investigation; communications with others who have personal knowledge
 7 of the events and circumstances described herein; and information gained through my
 8 training and experience.

9 4. Because this complaint is offered for the limited purpose of establishing
 10 probable cause, I list only those facts that I believe are necessary to support such a
 11 finding. I do not purport to list every fact known to me or others as a result of this
 12 investigation.

13 **II. SUMMARY OF INVESTIGATION**

14 5. In February 2020, HSI Seattle Field Office was advised by the HSI Boston
 15 Field Office that they had been investigating individuals accessing “dark web” sites and
 16 forums dedicated to the sexual abuse and exploitation of children. Previously in June of
 17 2019, a foreign law enforcement agency seized a computer server hosting three “dark
 18 web” sites operating on the TOR (The Onion Router) Network. Based on information
 19 obtained through collaborative investigation, one user that connected to what will be
 20 hereinafter referred to as the “TARGET WEBSITE,” was identified as THOMAS S.
 21 CLARK of Edmonds, Washington.

22 6. The foreign law enforcement agency described the TARGET WEBSITE as
 23 having “an explicit focus on the facilitation of sharing child abuse material (images, links
 24 and videos), emphasis on indecent material of boys.” The foreign law enforcement
 25 agency stated that “[u]sers were able to view some material without creating an account.
 26 However, an account was required to post and access all content.”

27 7. HSI was notified by the foreign law enforcement agency that IP Address
 28 73.35.134.84 accessed the TARGET WEBSITE on April 12, 2019, at 20:19:48 UTC. A

1 query of IP Address 73.35.134.84 revealed it was registered to Comcast Communications
 2 on April 12, 2019.

3 8. According to the foreign law enforcement agency and HSI Special Agent
 4 Greg Squire who observed the TARGET WEBSITE while it was operational, child
 5 pornography images and videos were trafficked through the TARGET WEBSITE via the
 6 posting of web links within forum messages. Links allowed a user to navigate to another
 7 website, such as a file-hosting website, where images and/or videos are stored, in order to
 8 download these images and videos. Entry to the TARGET WEBSITE was obtained
 9 through free registration.

10 9. Accordingly, based on SA McFarland's training and experience and the
 11 information articulated herein, because accessing the TARGET WEBSITE required
 12 numerous affirmative steps by the user – to include downloading Tor software, accessing
 13 the Tor network, finding the web address for TARGET WEBSITE, and then connecting
 14 to TARGET WEBSITE via Tor – it is extremely unlikely that any user could simply
 15 stumble upon the TARGET WEBSITE without understanding its purpose and content.
 16 The TARGET WEBSITE cannot generally be accessed through the traditional internet.
 17 Even after connecting to the Tor Network, a user would have to find the 16 or 56-
 18 character web address of the TARGET WEBSITE to access it. Hidden service websites
 19 on the Tor Network are not “indexed” by search engines such as Google to anywhere
 20 near the same degree as websites that operate on the open Internet.

21 10. On or about September 5, 2019, a summons was issued to Comcast
 22 Communications requesting subscriber information associated with IP address
 23 73.35.134.84 on April 12, 2019, at 20:19:48 UTC, corresponding to the date and time the
 24 TARGET WEBSITE was accessed by a user assigned that IP address.

25 11. On September 6, 2019, Comcast identified the following account holder
 26 and address associated with IP address 73.35.134.84 which corresponds with 9301 244th
 27 St. SW, Apt. H103, Edmonds, Washington, hereinafter the SUBJECT PREMISES:

28 Subscriber Name: TOM CLARK

1 Service Address: 9301 244th St. SW, Apt H103
 2 Edmonds, WA 98020-6560

3 12. A search of a public records database that provides names, dates of birth,
 4 addresses, associates, telephone numbers, email addresses, and other information was
 5 conducted for 9301 244th St. SW, Apt H103, Edmonds, Washington 98020, as well as
 6 "THOMAS CLARK". These public records indicated that THOMAS STEPHEN
 7 CLARK's current address is 9301 244th St. SW, Apt H103, in Edmonds, Washington (the
 SUBJECT PREMISES).

8 13. On March 2, 2020, SA McFarland queried Washington State Department of
 9 Licensing records which revealed THOMAS STEPHEN CLARK was issued a
 10 Washington State driver license on August 18, 2019 at the SUBJECT PREMISES.

11 14. On March 4, 2020, an HSI analyst obtained THOMAS STEPHEN
 12 CLARK's Washington State sex offender registry records which revealed THOMAS
 13 STEPHEN CLARK's address and status was last verified on December 21, 2019, at the
 14 SUBJECT PREMISES, located at 9301 244th St. SW, Apt. H103, Edmonds, Washington
 15 98020. I also contacted the Snohomish County Sheriff's Office who verified THOMAS
 16 CLARK's most recent check-in for the sex offender registry listed the SUBJECT
 17 PREMISES as his current residence.

18 15. On March 4, 2020, SA McFarland conducted surveillance of the SUBJECT
 19 PREMISES. The front entrance of THOMAS STEPHEN CLARK's apartment is located
 20 back from the sidewalk and is in an area where multiple units can be accessed rendering
 21 it difficult to determine which unit an individual came from. At approximately 8:00 a.m.,
 22 a male with similar physical characteristics as THOMAS STEPHEN CLARK exited the
 23 "H" apartments to walk his dog. At approximately 8:10 a.m., the same male returned to
 24 the "H" apartments with his dog. At approximately 8:35 a.m., the same male with similar
 25 physical characteristics as THOMAS STEPHEN CLARK exited the "H" apartments and
 26 got into a tan Subaru Crosstrek bearing Washington license plate number AYK9372 and
 27 departed the apartment complex. A query of license plate number AYK9372 revealed the
 28 registered owner is THOMAS STEPHEN CLARK at the SUBJECT PREMISES. Vehicle

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1 records indicate the vehicle was purchased by THOMAS STEPHEN CLARK in 2016
 2 and the registration was renewed on January 25, 2020, listing the SUBJECT PREMISES.

3 16. On March 2, 2020, SA McFarland queried THOMAS STEPHEN
 4 CLARK's criminal history which revealed THOMAS STEPHEN CLARK was
 5 previously convicted on June 2, 2017, of Washington State violations of RCW 9.68A.050
 6 Dealing in Depictions of Minors Engaged In Sexually Explicit Conduct and RCW
 7 9.68A.070 Possession of Depictions of Minors Engaged in Sexually Explicit Conduct.
 8 THOMAS STEPHEN CLARK was sentenced to six months of work release and
 9 Washington State Department of Corrections (DOC) Supervision which expired on or
 10 about November 27, 2018.

11 17. The Seattle Office of Homeland Security Investigations was the lead
 12 agency on THOMAS STEPHEN CLARK's 2016-2017 child pornography prosecution in
 13 which Special Agent Scott Sutehall received child pornography files from THOMAS
 14 STEPHEN CLARK via a chat application between August 21, 2016 and August 25,
 15 2016. At the time, THOMAS STEPHEN CLARK lived alone in his Mercer Island,
 16 Washington residence. Forensic analysis of THOMAS STEPHEN CLARK's digital
 17 devices and media following the execution of the 2016 residential search warrant yielded
 18 approximately 650 child pornography files. During his interview, THOMAS STEPHEN
 19 CLARK admitted to possessing child pornography and receiving and distributing child
 20 pornography via the chat application from his Apple iPhone. THOMAS STEPHEN
 21 CLARK also confessed to having a sexual interest in minor male children ages 13–15
 22 years old.

23 18. On March 13, 2020, HSI SA McFarland requested and was granted a
 24 federal search warrant (MJ20-124) for the search of 9301 244th St. SW, Apt. H103 in
 25 Edmonds, Washington, and the person of THOMAS S. CLARK.

26 19. On March 18, 2020, a HSI Seattle executed the search warrant at 9301
 27 244th St. SW, Apt. H103 in Edmonds, Washington. THOMAS S. CLARK was
 28 encountered inside the residence and was the sole occupant. Pursuant to the search

1 warrant, agents seized two (2) Apple iPhones; a Microsoft Surface GO model 1824; a
 2 Microsoft Surface Pro Laptop model 1796; and a SanDisk MicroSD card.

3 20. During the forensic examination of the listed devices, HSI SA McFarland
 4 identified two (2) video files depicting child pornography. They were found on evidence
 5 item #001 - Apple iPhone 8 Plus, and #002 – Apple iPhone 8 Plus. Although the files
 6 were found on separate devices, they were determined to be duplicate videos.

7 21. I reviewed the video file described above on the Apple iPhones and
 8 determined is titled “**Beef Tacos.wmv**”. The video is approximately 29 seconds in
 9 length and depicts a male child that appears to be 2-4 years old, lying on his back. What
 10 appears to be an adult male left hand is masturbating the penis of the child. The focus of
 11 the video is on the child’s genitals. The child is wearing a blue shirt but is exposed at the
 12 groin and thighs. I estimated the age of the child based on body size, minimal muscle
 13 development and lack of pubic hair

14 22. I further reviewed the forensic image of the devices and determined there
 15 were 472 image files and one (1) video file of child pornography on evidence line item
 16 #003 – Microsoft Surface GO. I have described two (2) of the image files from that
 17 device below.

18 23. Image file **2d86678990105a06.jpg** is an image that depicts a male child
 19 that appears to be approximately 3-4 years old, lying on his back on a red sheet with his
 20 genitals and anus toward the camera. What appears to be an adult male’s left hand is
 21 pushing a purple phallic device into the child’s anus. The focus of the image is on the
 22 child’s genitals and anus. I estimated the age of the child based on body size, minimal of
 23 muscle development and lack of pubic hair.

24 24. Image file **3b3120df3f8128db.jpg** is an image that depicts a nude newborn
 25 child that appears to be less than a year old, lying face down on a striped blanket. The
 26 index finger of what appears to be the right hand of an adult male is penetrating the
 27 child’s anus. The focus of the image is on the child’s anus. I estimated the age of the
 28

1 child based on body size, minimal muscle and skeletal development, lack of pubic hair
2 and an overall newborn child body appearance

3 25. Computer Forensic Agent (CFA) Heng found numerous “keyword”
4 artifacts that were indicative of child sexual abuse material. These artifacts were
5 associated with the Opera web browser that indicate the Opera web browser was used to
6 search for specific terms. The search terms found included: “boys town onion dark web”
7 and “hurtcore”. Based on my training and experience, I believe that “boys town onion
8 dark web” likely indicates a search for young boys sites related to The Onion Router
9 (TOR), and “hurtcore” is a term associated with extreme pornography, usually involving
10 degrading violence and child sexual abuse material. The Onion Router is also referred to
11 as the “TOR Network”, which a computer network available to Internet users that is
12 designed specifically to facilitate anonymous communication over the Internet. The TOR
13 network attempt to do this by routing TOR user communications through a globally
14 distributed network of relay computers, along a randomly assigned path known as a
15 “circuit.”

III. CONCLUSION

18 26. Based on the above facts, I believe that there is probable cause to conclude
19 that THOMAS S. CLARK committed the offenses charged in this Complaint.

REESE BERG, Complainant,
Special Agent
Department of Homeland Security
Homeland Security Investigations

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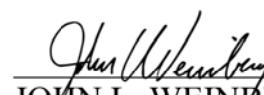
1 Based on the above-named Complainant having provided a sworn statement
2 attesting to the truth of the foregoing Affidavit, the Court hereby finds that there is
3 probable cause to believe the Defendant committed the offenses set forth in the
4 Complaint.

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6 DATED this 11th day of March, 2021.

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JOHN L. WEINBERG
United States Magistrate Judge

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